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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/527,884	03/15/2005	Hubert Groll	2002P01282WOUS	7624

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EXAMINER

WALDBAUM, SAMUEL A

ART UNIT	PAPER NUMBER
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1792

MAIL DATE	DELIVERY MODE
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02/25/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<i>Office Action Summary</i>	Application No.	Applicant(s)	
	10/527,884	GROLL ET AL.	
	Examiner	Art Unit	
	SAMUEL A. WALDBAUM	1792	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2008.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 December 2008 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. In the reply filed December 19, 2008, the applicant has amended 14, added claim 25. Amended the specification and added figure 3.

Specification

2. The amendment filed April 28, 2008 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: Detail how the pre-tensed spring is related in the figure, and how that spring is supported by the basket and how the spring is attached to the handle.

Applicant is required to cancel the new matter in the reply to this Office Action.

3. The amendment filed December 19, 2008 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: The newly added figure (fig. 3) and the paragraph added to the specification contain new matter. The figure and the amended specification disclose component to a dishwasher that were not disclosed before and the fact that the handle is placed on the lower dishwasher rack not the upper dishwasher rack.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 13-25 rejected under 35 U.S.C. 103(a) as being unpatentable over Scian, Luciano (EP 0855166, hereafter `166) in view of Finola et al (U.S. 5,601,195, hereafter `195) and Jacobus et al (U.S. 5,249,590, hereafter `590).

6. Claims 13, 14, 19 and 20: `166 teaches a front side of a basket (fig. 1) with a handle (fig. 1, part 6) with a fulcrum point (fig. 1, part 8, which means "the point or support which a lever pivots", www.dictionary.com, last visited January 9, 2008). `166 does not explicitly state that a door is a part of a standard dishwasher. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have made the handle adjustable around the fulcrum, since it has been held that the provision of adjustability, where needed, involves only routine skill in the art. *In re Stevens*, 101 USPQ 284 (CCPA 1954). It would have been obvious to one having ordinary skill in the art at the time the invention was made to the handle explicitly

Art Unit: 1792

movable around the fulcrum point, since it has been held that making an old device movable with out producing an new and unexpected results involves only routine skill in the art. *In re Lindberg*, 93 USPQ 23 (CCPA 1952).

`166 does not explicitly state that a door is a part of a standard dishwasher. `590 is a standard dishwashing machine. `590 teaches a door (fig. 1, part 14) in which the dishwashing racks with multiple sides rest inside the machine compartment (fig. 1). All of the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention, meaning that the door for the washing machine as taught by `590 is part of the standard dishwashing machine of apparatus `166.

`166 does not explicitly teach that the handle on the rack swings out when the door of the machine is opened. `195 is a dishwasher rack. `195 teaches that a member can pivot around one point and swing forward under the force of gravity after being released from being held in a vertical position (col. 2, line 10 - col. 3, line 40). All of the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention, meaning that the fact that a object can swing forward on a pivot point due to the force of gravity after being released as taught by `195 in apparatus `166 in view of `590 to yield the predictable result of the door acting as the latch for the handle and once that the door is moved that gravity would take over and swing the handle out around fulcrum/pivot point.

Art Unit: 1792

7. Claim 15 and 21: `166 and `195 do not teach using a pre-tensed spring on a the handle around the pivot point. `590 is solving the same problem as the applicant of forcing the movement of a arm around a pivot point. `590 teaches using a pre-tensed spring (fig. 3, part 27) to facility movement of the arm around the pivot point (col. 2, lines 15 - col. 4 line 10). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a pre-tensed spring as taught by `590 in apparatus `166 in view of `195 to have moved the handle around a pivot point.

8. Claim 16 and 22: Claims directed to apparatus must be distinguished form prior art in terms of structure rather than function. *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA). “[A]pparatus claims cover what a devices is not what a device does” *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990), meaning as the door closed in apparatus `166 in view of `590 and `195 in which when the door would push the handle back in to the vertical position.

9. Claim 17, 23 and 25: `166 teaches three sections a griping section (fig. 1, the top of the handle, part 6, col. 2, line 15-57), a second section connected to the fulcrum point (fig. 1, part 10 the arm of the handle) and a third section that supports the handle (fig. 1, the area that swings down below the fulcrum point).

10. Claim 18 and 24: `166 teaches that pieces can be snap-fitted to the wires of a basked (col. 1, lines 10-40). `195 teaches using a snap fit connection around the pivot section (fig. 2, parts 9 and 12) as a means of connecting the pivot point to the rack (col. 2, lines 10 - col. 3 line 40). It would have been obvious to a person of ordinary skill in the art at the time the invention

Art Unit: 1792

was made to have used a snap fit connection as taught by `195 in apparatus `166 in view of 195 and `590 to have connected the handle to the wire of the washing basket.

Response to Arguments

11. Applicant's arguments filed December 19, 2008 have been fully considered but they are not persuasive.

12. The applicant is first arguing that the amended figures filed April 28, 2008 does not contain new matter since the claims and the specification talk about the pre-tensed spring. Applicant is correct that the pre-tensed spring is not new matter, but how it is arranged on the basket and the handle is new matter since the original specification and the claims, thus it constitutes new matter.

13. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

14. The applicant is arguing that the prior art teach that the handle moves with gravity. `166 teaches that the handles is capable of moving around the fulcrum col. 3 lines 5-10, where the handle key is to provide a means for pulling out the basket from the washing machine which is the key part of the invention. `166 also teaches that the handle for the basket can be modified without departing from the scope of the invention (col. 3, lines 20-30). Since `166 teaches that the handle is moveable/rotatable around it fulcrum point, it is within the skill level of one ordinary skilled in the art at the time the invention to allow the handle to rotate on it fulcrum, and

Art Unit: 1792

still keeping within the scope of the invention of having a handle attached to the front of the basket to allow the user to grab the handle to pull out the basket.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SAMUEL A. WALDBAUM whose telephone number is (571)270-1860. The examiner can normally be reached on M-TR 6:20-3:50, F 6:30-10:30 est.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Cleveland can be reached on 571-272-1418. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. A. W./
Examiner, Art Unit 1792

/FRANKIE L. STINSON/
Primary Examiner, Art Unit 1792